



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill may affect personal responsibility for injurious activity.

Empower families -- This bill may affect relationships between family members.

#### B. EFFECT OF PROPOSED CHANGES:

The state constitution requires that most persons who are arrested be granted pretrial release. The constitution allows a court to impose reasonable conditions for such pretrial release. Statutory law requires some conditions of release, many more conditions are required either by local custom or by the court to meet the facts of the case. Current law does not require that a court granting pretrial release prohibit the defendant from receiving or purchasing firearms.

Section 903.047, F.S., provides that any order granting pretrial release must order the defendant to refrain from criminal activity of any kind, and must require the defendant not to contact the victim.

Section 790.065, F.S., governs the purchase and sale of firearms. It requires a gun dealer to contact the Florida Department of Law Enforcement (FDLE) to determine whether a potential purchaser<sup>1</sup> is prohibited from purchasing a firearm. FDLE maintains computerized records of persons prohibited from purchasing firearms. However, the check is not required if the person purchasing, or receiving delivery of, the firearm is a holder of a valid concealed weapons or firearms license, or the purchaser holds an active certification from the Criminal Justice Standards and Training Commission as a "law enforcement officer," a "correctional officer," or a "correctional probation officer".

The FDLE will report back to the gun dealer that the purchaser is prohibited from purchasing a firearm if the person:

- Has been convicted of a felony.
- Has been convicted of a misdemeanor crime of domestic violence.
- Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or expunction has occurred.
- Has been indicted or has had an information filed against her or him for an offense that is a felony under either state or federal law.
- Has had an injunction for protection against domestic violence entered against the potential buyer or transferee
- Has been arrested for any one of the enumerated offenses, while such case is pending or outstanding.

The enumerated offenses are the commission, attempt, or conspiracy to commit:

- Abuse, or aggravated abuse, of an elderly person or disabled adult
- Aggravated assault
- Aggravated battery
- Aircraft piracy
- Arson
- Assisting self-murder

---

<sup>1</sup> The statute also applies to a "transferee" as a purchaser.

- Burglary of a dwelling
- Carjacking
- Child abuse or aggravated child abuse
- Controlled substances violations
- Criminal anarchy
- Domestic violence
- Explosives
- Extortion
- Home invasion robbery
- Homicide
- Kidnapping
- Lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years
- Manslaughter
- Resisting an officer with violence
- Robbery
- Sabotage
- Sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority
- Sexual battery
- Stalking or aggravated stalking
- Terrorism
- Treason
- Weapons and firearms violations

### **Effect of Bill**

This bill amends s. 903.047, F.S., to add conditions of pretrial release, and to create forms related to pretrial release applicable to certain circumstances.

1. If the defendant was arrested for any of the enumerated offenses (listed above), the court must order the defendant not to purchase or receive a firearm. Such defendants will already be on the FDLE list of persons who may not purchase a firearm from a licensed dealer, the effect of this bill is to prohibit such defendants from obtaining firearms by gift, private purchase, or purchase in another state. There is no requirement to surrender firearms that the defendant owns or possesses.

2. If the defendant was arrested on any offense, the defendant and the alleged victim are "intimate partners", and if the court finds that the defendant poses a credible threat to the safety of the alleged victim, the victim's family, or a witness, the court must order the defendant to surrender to law enforcement any firearm in his or her possession within 24 hours after release. A defendant who fails to surrender his or her firearms must be returned to custody to be held without bail. The term "intimate partners" is defined to mean:

- Spouses
- Former spouses
- Persons who presently reside together in an intimate relationship or who have resided together in the past in an intimate relationship
- Persons who are parents of a child or children regardless of whether they have been married.

3. If the defendant was arrested upon a charge of domestic violence, and the defendant and the alleged victim are intimate partners, this bill creates mandatory forms relating to pretrial release. These additional terms are not otherwise set forth in statutory law, but are contained in the body of the forms and effectively become additional legal requirements for pretrial release. There is no requirement that

the court make a finding of whether the defendant poses a credible threat to the safety of others. The form adds the following legal requirements:

- Surrender of firearms.
- Specific terms related to no contact with the victim.
- Ability of the defendant to retrieve personal belongings.
- Override over any family law visitation orders in conflict.

The form of the order of pretrial supervision must be:

#### ORDER OF PRETRIAL RELEASE CONDITIONS IN DOMESTIC VIOLENCE CASES INVOLVING INTIMATE PARTNERS

The above-named defendant has been charged with a crime of domestic violence involving an intimate partner. The term "intimate partner" means a spouse; a former spouse; a person who presently resides, or who resided in the past, in an intimate relationship with the defendant; or a person who is a parent of a child or children of the defendant.

The monetary bond as required by section 907.041(4), Florida Statutes, is \$\_\_\_\_\_ cash or surety.

In addition to any monetary bond required by law, THE DEFENDANT IS ORDERED AS FOLLOWS:

(Initial the blank for condition 4. or 6., if appropriate, or mark "N/A" if it is not applicable.)

1. Do not engage in any criminal activity.
2. Do not use or possess any illegal drugs.
3. Do not purchase or receive a firearm.
4. Surrender any firearm in your possession to the arresting law enforcement officer, or law enforcement agency in the municipality or county in which you reside, within 24 hours after your release because it is apparent from the face of the arrest report, complaint affidavit, or information made available to the court under section 741.2901(3), Florida Statutes, that you pose a credible threat to the safety of the alleged victim, victim's family, or witness. You must provide proof of compliance with this condition of pretrial supervision with pretrial services or, if there is no pretrial service program, the clerk of the court. Failure to comply with this condition will result in revocation of pretrial supervision and your being placed in pretrial detention.
5. Refrain from any contact with the alleged victim, directly or indirectly, in person, in writing, by telephone, pager, fax, or through third persons. Stay at least 500 feet away from the alleged victim, the alleged victim's home, place of employment, and school at all times. Do not knowingly and intentionally come within 100 feet of the alleged victim's motor vehicle.
6. If you resided with the alleged victim at the time of the arrest, you may return to the alleged victim's residence, one time only, within 48 hours after your release following entry of this order. You must be accompanied by a law enforcement officer from an agency having jurisdiction over the alleged victim's residence. You may retrieve your personal clothing, personal health items, medication, personal and business-related paperwork, and work tools. Going to the alleged victim's home or remaining at

the home unaccompanied by the law enforcement officer will subject you to arrest. You must give the law enforcement officer all keys and garage door openers to the alleged victim's home, who will turn them over to the alleged victim.

The court is aware of a possible conflict between paragraph 5. of this order and a prior visitation order. However, in order to prevent immediate harm, the court has entered this order, which supersedes and takes precedence over any prior court order that allows contact between the parties. Either party may request a hearing before the judge in the case where the visitation order was entered to seek a modified visitation order that does not conflict with the "no contact" provision in this order, and may request modification of this pretrial release order.

This order shall remain in effect until the pretrial release supervision is terminated or until modified or terminated by the court.

Violation of this order is a first-degree misdemeanor under section 741.29(6), Florida Statutes, which carries a maximum punishment upon conviction of 1 year in jail and a fine of \$1,000, or may subject you to criminal contempt of court charges, and result in revocation of bond or pretrial release and pretrial detention.

Upon a motion to modify the pretrial release order specified above, the form of order for entry upon modification is:

#### ORDER MODIFYING PRETRIAL RELEASE CONDITIONS IN DOMESTIC VIOLENCE CASES INVOLVING INTIMATE PARTNERS

This matter came before the court upon the defendant's or the alleged victim's request to modify the order of pretrial release conditions previously issued under section 903.047, Florida Statutes. The court heard the testimony of the witnesses and hereby ORDERS AND ADJUDGES:

(Initial the blank in 1., 2., or 3., if appropriate, or mark "N/A" if it is not applicable.)

1. Paragraph 5. (the "no contact" provision) of the order of pretrial release conditions issued in this case on (DATE) \_\_\_\_\_ in favor of (ALLEGED VICTIM) \_\_\_\_\_ is hereby vacated to allow parties to have contact. The defendant may have contact with the alleged victim, but may not threaten or act violently towards the alleged victim in any manner. This is a condition of pretrial release under section 903.047, Florida Statutes.

2. Paragraph 4. of the order of pretrial release conditions issued in this case on (DATE) \_\_\_\_\_ is hereby vacated. The court having confirmed that there is no injunction in effect, hereby orders that any firearm surrendered by or taken from the defendant must be immediately returned to the defendant by the law enforcement agency with possession of the firearm when the defendant arrives to retrieve the firearm because the court finds that the defendant does not pose a credible threat to the safety of the alleged victim, victim's family, or witness.

3. Paragraph 4. of the order of pretrial release conditions issued in this case on (DATE) \_\_\_\_\_ is hereby retained and the firearms surrendered by or taken from the defendant may not be returned to his or her possession because the court finds that the defendant continues to pose a credible threat to the safety of the alleged victim, victim's family, or witness, or the defendant is otherwise ineligible to possess a firearm.

4. All other conditions of the order of pretrial release conditions remain in full force and effect. However, the defendant remains ineligible to purchase or receive a firearm under section 790.065, Florida Statutes.

The form of order for entry upon termination of pretrial supervision is:

**ORDER TERMINATING PRETRIAL RELEASE CONDITIONS IN DOMESTIC VIOLENCE CASES INVOLVING INTIMATE PARTNERS**

The defendant in this case is no longer on pretrial release. Any prior order of pretrial release conditions entered under section 903.047, Florida Statutes, are hereby **TERMINATED AND OF NO FURTHER FORCE OR EFFECT.**

A program providing pretrial services or, if there is no pretrial service program, the clerk of the court, must mail a copy of each of these orders to the alleged victim no later than 24 hours after entry of the order.

The clerk of the court must forward the court's order to the sheriff no later than 24 hours after the pretrial release conditions are ordered, terminated, modified, or otherwise rendered ineffective by a ruling of the court or final disposition of the case. The sheriff must, within 24 hours after receiving the notification from the clerk of the court, make information relating to the notification available to other law enforcement agencies by electronically transmitting the information to the Department of Law Enforcement. This electronic transmittal will have the effect of entering the defendant into the FDLE list of persons unable to purchase a firearm, or modifying the person's eligibility, as appropriate.

**C. SECTION DIRECTORY:**

Section 1 amends s. 903.047, F.S., amending the conditions of pretrial release.

Section 2 provides an effective date of July 1, 2005.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

This bill will cause clerks of court to modify or amend forms and computer programs relating to pretrial release orders. This bill will increase the use of judicial resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

This bill will require additional work by local law enforcement officers related to seizure, storage, and return of firearms.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Article I, s. 14, Fla.Const., provides that “every person charged with a crime . . . shall be entitled to pretrial release on reasonable conditions.” The exceptions to the requirement of pretrial release are:

- Capital offenses
- Life offenses
- Where no condition of release is can reasonably protect the community from risk of physical harm to persons.
- Where no condition of release can reasonably assure the presence of the accused at trial.
- Where no condition of release can assure the integrity of the judicial process.

This bill requires a condition of release applicable to certain persons, and may be examined by a court to determine whether the restrictions are a reasonable means to protect the community from risk of physical harm to persons.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Orders and process similar to the ones mandated by this bill are currently used in Broward, Citrus, Indian River, Miami-Dade, Palm Beach, Polk, and Sarasota counties.

This bill does not address the disposition of firearms that are surrendered to law enforcement.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.